

EXHIBIT 12

Highly Confidential - Subject to Further Confidentiality Review

Page 477

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL)	MDL No. 2804
PRESCRIPTION OPIATE)	
LITIGATION)	Case No.
)	1:17-MD-2804
)	
THIS DOCUMENT RELATES TO)	Hon. Dan A.
ALL CASES)	Polster
)	

— — —
Sunday, May 5, 2019
— — —

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CONFIDENTIALITY REVIEW
— — —

Videotaped Deposition of MEREDITH B.
ROSENTHAL, Ph.D., VOLUME 2, held at Robins
Kaplan LLP, 800 Boylston Street, Suite 2500,
Boston, Massachusetts, commencing at
8:04 a.m., on the above date, before
Michael E. Miller, Fellow of the Academy of
Professional Reporters, Registered Diplomate
Reporter, Certified Realtime Reporter and
Notary Public.

— — —
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<p style="text-align: right;">Page 746</p> <p>1 THE VIDEOGRAPHER: The time is 2 1:56 p.m. We're now off record. 3 (Recess taken, 1:56 p.m. to 4 1:58 p.m.) 5 THE VIDEOGRAPHER: The time is 6 1:58 p.m. We're back on the record. 7 EXAMINATION 8 BY MR. METZ: 9 Q. Good afternoon, Professor 10 Rosenthal. 11 A. Good afternoon. 12 Q. My name is Carl Metz. I 13 represent Cardinal Health, which is one of 14 the distributor defendants in this case. 15 A. I apologize for forgetting the 16 name of your employer as it were. 17 Q. That's all right. You're 18 referring to testimony yesterday where you 19 were asked about the distributor defendants, 20 you named two companies, and the third name, 21 Cardinal, eluded you. Yes? 22 A. Exactly, yes. 23 Q. Okay. At various places in 24 your report, you refer to marketing 25 defendants, correct?</p>	<p style="text-align: right;">Page 748</p> <p>1 A. In this paragraph in 2 particular, I'm talking about the defendants 3 who have detailing that I'm measuring in my 4 data, so those would be the marketing 5 defendants. 6 BY MR. METZ: 7 Q. Okay. And by marketing 8 defendants, you're not including any of the 9 distributor defendants, correct? 10 A. I don't believe that they have 11 marketing data in my data, so there may be 12 places in my report where I refer to 13 defendants where it's appropriate to talk 14 about them more generally, for example, when 15 I'm summarizing the complaint, but here I 16 intend to describe the defendants who have 17 detailing that is measured in the IQVIA data. 18 Q. Okay. So just to be clear, 19 not -- as you believe it, not -- that does 20 not include the distributor defendants, 21 correct? 22 MR. SOBOL: Objection, asked 23 and answered. 24 A. I believe that is true. 25 ///</p>
<p style="text-align: right;">Page 747</p> <p>1 A. Yes, I do. 2 Q. And then in other places, and 3 I'm sure this is not by design, you refer to 4 the word "defendants" without 5 differentiation. 6 MR. SOBOL: Objection to the 7 form. 8 You can answer. 9 A. Yes, I believe I use that term. 10 We could look to see how I use it. 11 BY MR. METZ: 12 Q. For example, in paragraph 64, 13 which you're welcome to look at, and I'll 14 quote this just partially. You say, quote: 15 A causal relationship between the 16 defendants', possessive, promotion and 17 prescriptions of opioids. 18 Do you see that? 19 A. Yes. 20 Q. And do I understand based on 21 your testimony over the last two days that 22 despite using the singular term "defendants," 23 we should not read that as referring to all 24 defendants, correct? 25 MR. SOBOL: Objection.</p>	<p style="text-align: right;">Page 749</p> <p>1 BY MR. METZ: 2 Q. Okay. And it also does not 3 include the pharmacy defendants, correct? 4 MR. SOBOL: Objection, asked 5 and answered. 6 A. Yes, that is correct. 7 BY MR. METZ: 8 Q. So we take another example, 9 paragraph 78, where you say, quote: An 10 alternative method of identifying the impact 11 of the defendants', possessive, misconduct, 12 is to use an indirect method. 13 Do you see that? 14 A. Yes. 15 Q. And there again, you're using 16 the term "defendants," but how we should 17 understand that is the marketing defendants, 18 correct? 19 A. Well, the -- in -- excuse me, 20 the indirect approach -- it is getting to be 21 late -- is, as you know, a residual approach, 22 so it inherently is looking at all of these 23 demographic, socioeconomic and healthcare 24 factors that could have driven higher opioid 25 use and attributes that which is left to the</p>

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<p style="text-align: right;">Page 750</p> <p>1 misconduct.</p> <p>2 I think it's a little bit less</p> <p>3 clear about how that analysis might be used</p> <p>4 to assess liability for distributors. I have</p> <p>5 not been asked to do that, but the indirect</p> <p>6 analysis, because it's not measuring the</p> <p>7 conduct of a specific group, could be open to</p> <p>8 a broader interpretation.</p> <p>9 Q. Have you disclosed any opinions</p> <p>10 that, based upon your indirect model, you</p> <p>11 draw conclusions about distributor</p> <p>12 defendants' conduct?</p> <p>13 A. I have not. I have not drawn</p> <p>14 those conclusions.</p> <p>15 Q. And you mentioned the detailing</p> <p>16 data, but just to be clear, you did not</p> <p>17 include in your direct model any data series</p> <p>18 that you understood were measuring the</p> <p>19 conduct of the distributor defendants; is</p> <p>20 that correct?</p> <p>21 MR. SOBOL: Objection, asked</p> <p>22 and answered.</p> <p>23 A. I have not measured the conduct</p> <p>24 of the distributors or included that in my</p> <p>25 model.</p>	<p style="text-align: right;">Page 752</p> <p>1 set of prescriptions that combine to make up</p> <p>2 the additional MMEs you've identified in your</p> <p>3 analysis, correct?</p> <p>4 A. The way my analysis works is to</p> <p>5 analyze the actual data and identify a</p> <p>6 quantity of prescriptions in aggregate that</p> <p>7 would not have been filled absent the</p> <p>8 promotional misconduct.</p> <p>9 As I noted yesterday, because</p> <p>10 the but-for scenario did not occur, we cannot</p> <p>11 explicitly observe which individual</p> <p>12 prescriptions would not have been filled. So</p> <p>13 there's a conceptual impossibility to the</p> <p>14 statement that you're describing.</p> <p>15 Q. Okay. So just to be clear,</p> <p>16 your answer is yes, but for the reason that</p> <p>17 it would be impossible?</p> <p>18 MR. SOBOL: Objection, asked</p> <p>19 and answered.</p> <p>20 A. Yes, and my analysis -- as you</p> <p>21 know, my assignment was to estimate the</p> <p>22 impact of the alleged misconduct and to</p> <p>23 quantify that in aggregate.</p> <p>24 BY MR. METZ:</p> <p>25 Q. I understand. The alleged</p>
<p style="text-align: right;">Page 751</p> <p>1 BY MR. METZ:</p> <p>2 Q. And the same would be true of</p> <p>3 the pharmacy defendants, correct?</p> <p>4 MR. SOBOL: Objection, asked</p> <p>5 and answered.</p> <p>6 A. I have not measured the conduct</p> <p>7 of the pharmacies and included that in my</p> <p>8 models.</p> <p>9 MR. METZ: Just so it's not</p> <p>10 recurring, I'm five questions in.</p> <p>11 What have I asked and answered? Or</p> <p>12 what have I asked previously?</p> <p>13 MR. SOBOL: All of this was</p> <p>14 covered by Mr. Roth this morning and</p> <p>15 yesterday.</p> <p>16 MR. METZ: Okay. I disagree.</p> <p>17 BY MR. METZ:</p> <p>18 Q. You testified at several points</p> <p>19 that the design of your model is intended to</p> <p>20 capture an aggregate effect on MMEs sold,</p> <p>21 correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And in part what that means is</p> <p>24 you've not reported your results in a way</p> <p>25 that allows you to identify any particular</p>	<p style="text-align: right;">Page 753</p> <p>1 marketing misconduct, correct?</p> <p>2 A. The alleged marketing</p> <p>3 misconduct.</p> <p>4 Q. And am I correct that the data</p> <p>5 that you use in your calculation does not</p> <p>6 contain identifying information for</p> <p>7 individual prescriptions, correct?</p> <p>8 A. My data do not contain</p> <p>9 individual prescription identifiers. I</p> <p>10 assume by that you mean something like a</p> <p>11 member identifier.</p> <p>12 Q. Anything that would enable you</p> <p>13 to identify a specific prescription that's</p> <p>14 within the sum of your conclusions?</p> <p>15 A. No. Again, because of -- for</p> <p>16 privacy reasons, my data are deidentified.</p> <p>17 Q. Okay. Now, you testified</p> <p>18 yesterday that you have not formed any</p> <p>19 opinions about the separate role of doctors</p> <p>20 in causing an increase in the MMEs that you</p> <p>21 measured.</p> <p>22 Do you recall that testimony?</p> <p>23 A. I believe I described the fact</p> <p>24 that of course doctors are in the causal</p> <p>25 chain, they're the ones writing the</p>